137

SUPREME COURT OF THE UNITED STATES.

No. ~~278~~. ~~147~~ 40

ANN R. DERMOTT, PLAINTIFF IN ERROR,

vs.

CHARLES S. WALLACH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

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Gideon, Print.

DISTRICT OF COLUMBIA, *to wit*.

The United States of America to the Judges of the Circuit Court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between Charles S. Wallach, plaintiff, and Ann R. Dermott, defendant, a manifest error hath happened, to the great damage of the said defendant, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 11th day of November, 1859.

JNO. A. SMITH, *Cl'k*.

Filed 14th November, 1859.

DISTRICT OF COLUMBIA, *to wit*.

The United States of America to Charles S. Wallach, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein Ann R. Dermott is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness the Honorable James Dunlop, chief judge of the circuit

court of the District of Columbia, this 11th day of November, 1859.

JAS. DUNLOP.

Service acknowledged.

J. M. CARLISLE,
Att'y for C. S. Wallach.

Copy Appeal Bond.

Know all men by these presents, that we, Ann R. Dermott, Samuel Bacon, and Peter F. Bacon, are held and firmly bound unto Charles S. Wallach, in the full and just sum of two hundred dollars, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 11th day of November, eighteen hundred and fifty-nine.

Whereas, at the present term of the circuit court of the District of Columbia, for the county of Washington, in a suit pending in the said court, wherein the said Charles S. Wallach was plaintiff, and the said Ann R. Dermott was defendant, judgment was rendered against the said defendant, and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles S. Wallach, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Ann R. Dermott shall prosecute her writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

ANN R. DERMOTT, [SEAL.]
SAM'L BACON, [SEAL.]
PETER F. BACON, [SEAL.]

Signed, sealed and deliv'd in presence of—
JAS. M. ALLEN.

Approved by the court.
True copy.

Test: JNO. A. SMITH, *Cl'k.*

Style of Court.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washing-

ton, on the third Monday of October, being the seventeenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

Present, the Hon'bles James Dunlop, chief judge; James S. Morsell and Wm. M. Merrick, ass't judges; Wm. Selden, esq., marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, amongst others are the following, to wit:

Parties.

CHARLES S. WALLACH
vs.
ANN R. DERMOTT.

Be it remembered, that heretofore, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the said plaintiff, by Carlisle and Maury, esquires, his attorneys, filed in court here a certain writing obligatory, commonly called a replevin bond, in the words and of the tenor following, to wit:

Rep. Bond.

Know all men by these presents, that we, Charles S. Wallach, trustee, Richard Wallach, and George S. Gideon, all of Washington county, in the District of Columbia, are held and firmly bound unto Ann R. Dermott in the sum of six thousand dollars, current money, to which payment well and truly to be made and done we do hereby bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of May, 1857.

Whereas the above bound Charles S. Wallach, trustee, is about to prosecute and sue forth out of the circuit court of the District of Columbia for the county of Washington, the United States writ of replevin, to be directed to the marshal of said District, and returnable to next October term, commanding the said marshal to replevy and deliver to him, the said Charles S. Wallach, trustee, the following goods and chattels, to wit: one steam-boiler and fixtures, large cooking-range and fixtures, one piano-forte, cover and stool, three pier-glasses, sixty-five hair mattresses, one hundred pairs blankets, fifty carpets, sixty bureaus, one hundred pillows and bolsters, and sixty-five washstands; which the above named Ann R. Dermott has taken and unjustly detains, as it is said:

Now, the condition of the above obligation is such, that if the said Charles S. Wallach, trustee, do and shall well and truly prosecute said writ of replevin with effect, and shall well and truly deliver to said Ann R. Dermott the goods and chattels aforesaid, if a return thereof shall be adjudged by the said court, then the

above obligation to be void and of no effect; otherwise to be and remain in full force and virtue in law.

CHAS. S. WALLACH, *Trustee,* [SEAL.]
RICHARD WALLACH, [SEAL.]
GEORGE S. GIDEON. [SEAL.]

Signed, sealed, and delivered in presence of—
A. G. PALMER,
JOS. W. NAIRN.

Thereupon, on the day and year aforesaid, the said plaintiff, by his attorneys aforesaid, prosecuted and sued forth out of the circuit court here the United States writ of replevin to the marshal of the District aforesaid, directed in form following, to wit:

Replevin.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America to the Marshal of the District of Columbia, greeting:

Whereas Charles S. Wallach, of the county of Washington, hath come into the circuit court of the District of Columbia for the county aforesaid, and found sufficient sureties, as well his claimor to prosecute as for one steam-boiler and fixtures, one large cooking range and fixtures, one piano-forte, cover and stool, three pier glasses, sixty-five hair mattresses, one hundred pairs blankets, fifty carpets, sixty bureaus, one hundred pillows and bolsters, sixty-five wash-stands, the proper goods and chattels of him, the said Charles S. Wallach, which a certain Ann R. Dermott, of the county aforesaid, hath taken and unjustly detains against sureties and pledges, &c., (as it is said,) to be returned, if a return thereof shall be adjudged:

You are therefore hereby commanded, that the said goods and chattels, being in the county aforesaid, in your said District, you cause to be replevied and delivered to the said Charles S. Wallach, and that you put, by sureties and safe pledges, the said Ann R. Dermott, that she be and appear before the said circuit court, to be held for the county aforesaid, at the city of Washington, on the 3d Monday of October next, to answer the said Charles S. Wallach in a plea, wherefore *he* took the goods and chattels of him, the said Charles S. Wallach, and them unjustly detains, against gages and pledges, &c.

And how you shall execute this writ make known to the said court, at the day and place aforesaid, and have you then and there this writ.

Witness the Hon. James Dunlop, esquire, chief judge of the said court, the 5th day of May, 1857.

Issued this 18th day of May, 1857.

JNO. A. SMITH, *Cl'k.*

CARLISLE & MAURY.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and fifty-seven, and the day of the return of the aforegoing writ, comes into the circuit court here the said plaintiff, by his attorneys aforesaid; and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's Return.

Replevied and delivered as per schedule and receipt.

J. D. HOOVER,
Marshal.

And the said defendant being so forewarned, appears in court here, by Brent & Brent, esquires, her attorneys; and thereupon, on motion of the said defendant, by her attorneys aforesaid, it is ruled by the court here that said plaintiff declare against the said defendant in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. Thereupon the said plaintiff, by his attorneys aforesaid, declares against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington County, sct.

Ann R. Dermott, late of said county, was summoned to answer unto Charles S. Wallach in a plea, wherefore she took the goods and chattels of the plaintiff, and them unjustly detains, &c.

And therefore the plaintiff complains, for that whereas the defendant heretofore, to wit, on the eighteenth day of May, in the year of our Lord eighteen hundred and fifty-seven, in the city of Washington, to wit, at the county aforesaid, in a certain dwelling and messuage, situate in the said city, and known and described as the "Avenue House," took the goods and chattels of the plaintiff, as follows—that is to say, one steam-boiler and fixtures, one large cooking range and fixtures, one piano-forte, cover and stool, three pier glasses, sixty-five hair mattresses, one hundred pairs blankets, fifty carpets, sixty bureaus, one hundred pillows and bolsters, sixty-five wash-stands, of great value, to wit, of the value of six thousand dollars, and them unjustly detains, against sureties, pledges, &c. And therefore the plaintiff says he is injured and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

CARLISLE & MAURY,
Att'ys for Plaintiff.

Rule Plea

And the said plaintiff, by his attorneys aforesaid, prays that the said defendant to his declaration aforesaid may answer; thereupon, it is ruled by the court here, that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against her in default thereof.

And the said defendant, by her attorneys aforesaid, defend the force and injury, when, &c., and pray leave of the court here to imparle until the third Monday of January next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to her it is granted; the same day is given to the aforesaid plaintiff also.

January Term, 1858.

All which mentioned third Monday of January, in the year of our Lord one thousand eight hundred and fifty-eight, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in plea aforesaid, comes again into the circuit court here, as well the said plaintiff by his attorneys aforesaid, as the said defendant by her attorneys aforesaid.

Avowry.

And the said defendant, by her attorneys aforesaid, defends the wrong and injury, when, &c., and says that the goods and chattels in the declaration mentioned are not the property of the said plaintiff, and of this she puts herself upon the country.

And the said defendant, by her attorneys aforesaid, further defends the wrong and injury, when, &c., and well avows the taking of said goods and chattels in the place where, &c., and justly, and so forth.

Because she saith, that a certain Melvin A. Dexter, for a long time next before the said taking, and from the 18th day of August, in the year of our Lord eighteen hundred and fifty-five, and from thence until and at the said time, when, &c., held and enjoyed all those certain messuages, tenements and buildings erected on lots 1 and 2, in square 432, and fronting on Market space and 7th street west in Washington city, in the District of Columbia, (saving and excepting certain parts of said buildings, messuages, and tenements, excepted and reserved in the demise hereinafter mentioned,) in which, &c., with the appurtenances, as tenant thereof to the said avowant, by virtue of a certain demise to him, the said Dexter, theretofore made, at and under a certain yearly rent of three thousand dollars, payable in monthly instalments of two hundred and fifty dollars each, commencing for the first of said instalments on the first day of November, A. D. 1855, for and during the full

term of three years next ensuing the first day of October, A. D. 1855, and in which said demise it was stipulated among other things, that if the said Melvin A. Dexter should at any time during the said term remove or attempt to remove any of his goods, chattels, wares or merchandise from the said premises, with the consent in writing of the said Ann R. Dermott, except the same should be replaced with goods, chattels, wares and merchandise of equal value, then and in that case, and immediately upon the happening thereof, one whole year's rent, to wit, the rent of three thousand dollars over and above all rents then accrued, should be paid by the said Melvin A. Dexter to the said Ann R. Dermott, and the same should immediately thereupon accrue and become due and owing from the said Dexter to the said Ann, and the same might be levied by distress and sale of all such goods and chattels as should or might be found on the premises liable to distress for rent, and because the said Dexter during said term, to wit, on the eighteenth day of May, A. D. one thousand eight hundred and fifty-seven, did attempt to remove, and in fact did remove divers of his goods, chattels, wares and merchandise of great value, to wit, of the value of $6,000, from said premises, without the consent in writing of said Ann R. Dermott, and without replacing the same as aforesaid; whereupon one whole year's rent, to wit, the rent of three thousand dollars over and above all rents then accrued, became due and owing from the said Dexter to the said Ann, according to the force and effect of said demise, and the said amount of three thousand dollars so due and owing was afterwards, to wit, on the 17th day of May, A. D. 1857, demanded by the said Ann of and from the said Dexter, and payment then and there refused by said Dexter; and because the said rent of three thousand dollars, so as aforesaid due and owing, and so demanded as aforesaid, on the said 17th day of May, A. D. 1857, and from thence until and at the said time when, &c., was due and in arrear from the said Dexter to the said avowant, she the said avowant well avows the taking of the said goods in the premises so as aforesaid demised to the said Dexter, and justly, &c., as for and in the name of a distress for the said rent so demanded, in arrear and due to the said avowant, and this she is ready to verify, &c., wherefore she prays judgment and a return of said goods and chattels according to the form of the statute in such case made and provided to be adjudged to her, &c.

2d. And by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said Ann R. Dermott further well avows the taking of said goods and chattels in the place in which, &c., and justly, &c., because she saith that she the said avowant for a long time, to wit, during all the time when the rents hereinafter mentioned were accruing due, and from thence until and at the time

when, &c., was landlady to a certain Melvin A. Dexter, of the premises in which, &c., and that he the said Dexter for a long time from and after the 18th day of August, A. D. 1855, and from thence until and at the said time when, &c., held and enjoyed the said premises in which with the appurtenances, as tenant thereof to this avowant, under a certain demise thereof made on the said 18th day of August, A. D. 1855, at and under certain rents thereby and therein stipulated to be paid by the said Dexter to the said avowant.

And because the sum of five thousand dollars of the rent aforesaid, at the said time, when, &c., was due and in arrear from the said Dexter to the said avowant, according to the terms and effect of said demise, she, the said avowant, well avows the taking of said goods and chattels on said premises, in which, &c., as for and in the name of a distress for the said rents so due and in arrear to the said avowant, as aforesaid, and this she is ready to verify, &c.

Wherefore she prays judgment, and a return of said goods and chattels, together with damages, &c., according to the form of the statute in such case made and provided, to be adjudged to her, &c.

Replication, rien en arrere.

And the said plaintiff saith, that the said defendant, for the reasons before alleged, ought not to avow the taking of the goods, &c., aforesaid, in the said place, where, &c., just, because he said, that the said sum of three thousand dollars of the rent aforesaid, at the time when, &c., was not in arrear and unpaid to the said defendant, nor was any penny thereof, at the said time when, &c., in arrear to the said defendant, as the said defendant in her avowry aforesaid hath above alleged, and this he prays may be inquired of by the country, &c., and the said defendant likewise, &c.

Issue joined.

And for further plea in this behalf to the said first avowry of the said defendant, the said plaintiff, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, saith that the said Ann R. Dermott, by reason of anything in her said avowry alleged, ought not to avow the taking of the said goods and chattels of the said plaintiff, in the said place in which, &c., and justly, &c., because he saith that he did not in fact remove or attempt to remove the said goods, chattels, wares and merchandise from the said premises, in manner and form as alleged and avowed in the said defendant's avowry, and this the said plaintiff prays may be inquired of by the country; and the said defendant in like manner, and so forth.

Venire facias.

Therefore let a jury thereon appear before the court here on the

first Monday of May, next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., the same day is given to the said parties then and there, &c.

May Term, 1858.

At which mentioned first Monday of May, in the year of our Lord one thousand eight hundred and fifty-eight, comes again into the circuit court here, as well the said plaintiff by his attorneys as the said defendant by her attorneys aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the third Monday of October next.

Oct. Term, 1858.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and fifty-eight, comes again into the circuit court here, as well the said plaintiff by his attorneys aforesaid, as the said defendant by her attorneys aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by their attorneys aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of January next.

Jan'y Term, 1859.

At which mentioned third Monday of January, in the year of our Lord one thousand eight hundred and fifty-nine, comes again into the circuit court here, as well the said plaintiff by his attorneys aforesaid, as the said defendant by her attorneys aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the first Monday of May next; the same day is given to the said parties then and there, and so forth.

May Term, 1859.

At which mentioned first Monday of May, in the year of our Lord one thousand eight hundred and fifty-nine, comes again into the circuit court here, as well the said plaintiff by his attorneys aforesaid, as the said defendant by her attorneys aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of October next;

the same day is given to the said parties then and there, and so forth.

Oct. Term, 1859.

And now, at this term, to wit, the said third Monday of October, in the year of our Lord one thousand eight hundred and fi ty-nine, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid; whereupon, for trying the issue aforesaid, it is ruled by the court here that twelve persons from the panel of petit jurors returned to the court here, by the marshal of the District of Columbia, be called, who being called, come, to wit:

Jury.—Verdict.—Judyment.

1. Otho Muncaster; 2. Thos. E. Young; 3. Thomas Orme; 4. Thomas Galligan; 5. Alex'r F. Bully; 6. John S. Berrett; 7. George D. Spencer; 8. George W. Cochran; 9. Thomas Fitman; 10. Pierce Shoemaker; 11. James Owner; 12. Eustice E. O'Brien; who being duly empanelled and sworn, to say the truth of and upon the premises aforesaid, upon their oath do say, that the said sum of three thousand dollars of the rent aforesaid, at the said time when, &c., was not in arrear and unpaid to the said defendant, nor was any penny thereof, at the said time when. &c., in arrear to the said defendant, as the said plaintiff above, by replying, hath alleged, and they assess the damages of the said plaintiff, by reason of the taking and unjustly detaining of the goods and chattels aforesaid, to the sum of one cent current money; therefore, it is considered by the court here, that the said plaintiff recover against the said defendant the aforesaid goods, wares, and merchandise in the declaration aforesaid mentioned, and that he have a return of the same to be detained to him irrepleviable forever &c.; and it is also considered by the court here, that the said plaintiff recover against the said defendant, as well the sum of one cent current money, his damages aforesaid, by the jurors aforesaid in form aforesaid assessed, as also the sum of dollars and cents, by the court here unto him, on his assent, adjudged for his costs and charges by him about his suit in this behalf laid out and expended, and the said defendant in mercy, &c.

Test: JNO. A. SMITH, *Cl'k.*

Mem.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here, the said defendant, by her attorneys aforesaid, filed in court here the following bills of exceptions, to wit:

Defendant's Bil of Exceptions.

CHARLES S. WALLACH
vs.
ANN R. DERMOTT.

On the trial of this case, the plaintiff, to maintain the issues on his part, gave in evidence a certain deed of trust, made and delivered to him by one Melvin A. Dexter, dated Octo. 28, 1856, and duly recorded in Liber J. A. S., No. 123, as follows: (Copied in page 28, &c.;) and further gave evidence of the identity of the goods and chattels replevied in this suit, with those described in and conveyed by said deed of trust; and that the note described in the said deed fell due to Cornelius Wendell, therein named, and that default was made in the payment thereof; and that, at the request of the said Cornelius Wendall, the holder thereof, the said plaintiff, on the 28th day of April, 1857, proceeded to advertise the said goods and chattels for sale, on the 12th day of May next thereafter; and on the said last mentioned day began to make such sale, by an auctioneer, on the premises known as Dexter's Hotel, in the city of Washington, of which hotel the same were the furniture, and was proceeding with such sale, day by day, until the 18th of the said month of May, when the defendant took the goods aforesaid under a distress, then and there levied, for the sum of three thousand dollars, $3,000. And thereupon the plaintiff sued out the writ in this case; and further proved that the rent of the said hotel and premises was paid up to and inclusive of the first day of the said month of May. And thereupon the defendant read in evidence the following lease from her to the said Dexter, of the said hotel and premises, dated August 18, 1855. (Copied in page 37, &c.)

And further gave evidence that the said Dexter executed to the plaintiff a prior deed of trust, dated Nov'r, 1855, as follows: (Copied in page 43.)

And it further appeared in the evidence that default was also made in the payment of the note described in the last aforegoing deed; and that both the said notes were in the possession of an agent of the said Wendall before and at the time of the said sale; and that the proceeds of the said sale, including the goods replevied as aforesaid, did not suffice to pay both the said notes; and that the said agent (who was examined as a witness) had searched diligently for the said notes, but could not now find the same, and did not know what had become of them.

And the defendant further gave evidence, that the said sale was by public auction begun on the said 12th May, and continued down to and after the said 18th May, and was made, article by article, with the view and intention that the same should be delivered to and removed by the respective purchasers after the conclusion of the whole sale, and that the whole proceeds of the said sale, which was of all the furniture, goods, and chattels upon the premises, after paying expenses and commissions, were paid to the said Wendall on the said notes as aforesaid.

And that pending such sale, and on the 18th day of May aforesaid, the defendant claiming one whole year's rent, to wit, the sum of three thousand dollars, by reason of the said sale, and proceedings under the said deed of trust, then and there levied a distress for the said sum upon goods and chattels found on the premises, which are the goods and chattels in the declaration mentioned.

And further, that the proceedings of the plaintiff in the premises were with the knowledge of the said Dexter, and without any hindrance by him, but that he was present at the sale, and did all in his power to make the goods bring the best prices. That immediately after the said sale the said Dexter abandoned the said premises, leaving the keys in the possession of the auctioneer, who delivered them to the defendant in pursuance of a note of that date, made part hereof, (copied in page 51,) and that shortly afterwards the said Dexter removed to Kansas.

And the plaintiff then gave evidence that the defendant took possession of the said hotel and premises on the 23d day of June, 1857, and during the same summer rented the same to another tenant, and thereupon the defendant prayed the court to instruct the jury as follows:

1st. If the jury find from the evidence aforesaid, that prior to the bringing of this suit, and after the 1st day of May, 1857, the said plaintiff, acting under the deeds of trust read in evidence, or one of them, and with the privity and assistance of the said Melvin A. Dexter, or the plaintiff, as his assignee named in the evidence, was attempting to remove from the premises named in said lease, dated 18th August, 1855, and of the goods and chattels thereon, without replacing them with others of equal value, then, and by the effect of said lease, the sum of three thousand dollars became immediately due and payable by said Dexter, as and for one year's rent, over and above all rents then due, and the defendant was then and there entitled to distrain the goods and chattels found on said premises, notwithstanding the deeds of trust read in evidence; and if the jury further find that the defendant did then and there distrain the goods and chattels aforesaid for the recovery of the said $3,000, then the plaintiff is not entitled to recover.

2d. That the deeds of trust read in evidence confer no title to recover, because the same are fraudulent, void as against creditors.

3d. If the jury find from the evidence that possession of the property described in said deeds of trust read in evidence did not follow and accompany the said deeds, but the said possession remained in said Dexter after the maturity of the notes therein described, and until the defendant distrained on part of said property, then the said deeds are prima facie fraudulent as against creditors, and there is no evidence in this case to overthrow the

legal presumption of fraud upon the facts aforesaid; but the court rejected said prayers, and each of them, and the defendant excepts to said rejection, and prays that her bill of exceptions may be signed, sealed, and enrolled in the same manner and to the same effect as if each of said prayers and the rejection thereof were set forth in separate bills of exceptions, which is accordingly done this 8th Nov., 1859.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Deed of Trust from Melvin A. Dexter to Charles S. Wallach, referred to in Defendant's Bill of Exceptions, page .

MELVIN A. DEXTER
to
CHARLES S. WALLACH.

Deed of Trust recorded 29th October, 1856, in Liber J. A. S., No. 123, fol. 285, &c.

This indenture, made this twenty-fourth day of October, in the year of our Lord eighteen hundred and fifty-six, between Melvin A. Dexter, of the county of Washington, in the District of Columbia, of the first part, and Charles S. Wallach, of the same place, of the second part, witnesseth:

Whereas the said party of the first part is justly indebted unto Cornelius Wendell, of Washington city, in the full sum of five thousand dollars; and for the said sum has passed to the said Cornelius Wendell his certain promissory note, bearing even date with these presents, for the sum of five thousand dollars, and payable in six months after date; and being desirous to secure the payment of said promissory note when and as the same shall become due and payable, has agreed to make and execute these presents: Now, therefore, this indenture further witnesseth, that for and in consideration of the premises, and of the sum of five dollars current money of the United States to him in hand paid, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part has bargained, sold and delivered, assigned, transferred and set over, and by these presents does grant, bargain, sell and deliver, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, all and singular the goods and chattels, household stuff and kitchen furniture named and described in the schedule marked "A," and hereunto annexed, and now lying and being situate in a certain messuage or tenement and premises on the corner of Louisiana avenue and 7th street, in Washington city, and occupied by the said party of the first part, as a hotel and restaurant: to have and to hold the said goods and chattels, household stuff and kitchen furniture, unto him, the said party of

the second part, his executors, administrators and assigns, to his and their own proper use, benefit and behoof forever; in trust, nevertheless, to, for and upon the following uses and trust—that is to say, in trust to suffer and permit the said party of the first part, his executors or administrators, to retain possession of, use and enjoy the said goods and chattels, household stuff and kitchen furniture, until default made in the payment of said promissory note, or any note or notes, or any part of any note or notes, given in and by way of renewal thereof, or until the said party of the first part, his executors or administrators, do and shall suffer and permit any one quarter's rent of said messuage or tenement in or to which the said goods and chattels, household stuff and kitchen furniture, or any part thereof, shall or may be removed, put and placed, to become due and owing, and remain so due and owing, for the space of thirty days after the same shall have become so due and owing, or shall suffer and permit any judgment to be recovered in any court of law or of equity, or before any magistrate or justice of the peace, against him, the said party of the first part, his executors or administrators, and execution or executions to be issued thereon, and levied upon the said goods and chattels, household stuff and kitchen furniture, or any part or parcel thereof; and in case of the said party of the first part, his executors or administrators, do and shall fail to pay and satisfy said promissory note, or any note or notes, or any part of any note or notes given in and by way of renewal thereof, or shall suffer and permit any one quarter's rent of said messuage or tenement, or any other messuage or tenement in and to which the said goods and chattels, household stuff and kitchen furniture, or any part thereof, shall or may removed, put and placed, as aforesaid, to become due and owing, and remain due and owing for the space of thirty days, as aforesaid, or any judgment, as aforesaid, to be recovered as aforesaid, and execution to be issued and levied as aforesaid, then, and in either of those cases, the said party of the second part, his executors or administrators, do and shall, at the request of the said Cornelius Wendell, or his executors, administrators or assigns, take possession of said goods and chattels, household stuff and kitchen furniture, and, after giving at least ten days' notice in some paper printed and published in the city of Washington, sell the same at public sale, upon such terms as he shall deem most advantageous to the parties concerned, and deliver the same to the purchaser or purchasers thereof; and out of the proceeds of said sale, after retaining unto himself five per cent. upon the gross amount of said sale, for his trouble in executing this trust, pay, in the first place, all expenses of said sale, and in the next place pay to the said Cornelius Wendell, his executors, administrators or assigns, the whole amount of said promissory note, or of any note or notes given in and by way of renewal thereof, or so much

thereof as may then remain unpaid, it being understood and agreed that on the happening of either of the aforesaid events, the whole of said promissory note, or any note or notes given in and by way of renewal thereof, shall and are to be considered due and payable, and all credit thereon to cease, together with all interest which may have accrued thereon, and the balance, if any, pay over to the said party of the first part, his executors, administrators or assigns. But in case the said party of the first part, his executors or administrators, do, and shall, well and truly, without default and without having suffered and permitted any rent to have become due and owing, and remain due and owing as aforesaid, or any judgment to be recovered, and execution to be issued and levied as aforesaid, pay and satisfy said promissory note and all and every promissory note or notes given in and by way of renewal thereof, together with all interest which may accrue thereon, when and as the same shall become due and payable; then, in that case, the said party of the second part, his executors or administrators, do and shall, at the request and cost of the said party of the first part, his executors, administrators or assigns, make and execute unto him, the said party of the first part, his executors, administrators and assigns, good and sufficient deed of release of all and singular the said goods and chattels, household stuff and kitchen furniture.

And the said party of the first part, for himself, his heirs, executors and administrators, by these presents, covenants and agrees to and with the said party of the second part, his heirs, executors, administrators and assigns, the said goods and chattels, household stuff and kitchen furniture, hereby bargained, sold, and conveyed, to insure and keep insured, in the full sum of five thousand dollars, in some good and safe insurance office, during the continuance of this trust, and the policy and policies of such insurance or insurances, and the proceeds thereof, from time to time, during the continuance of this trust, to assign, transfer, and set over unto him, the said party of the second part, his executors and administrators, to, for, and upon the uses and trusts, intents and purposes, in this indenture mentioned; and in case of a failure on the part of the said party of the first part, his executors or administrators, to so insure and keep insured the said goods and chattels, household stuff and kitchen furniture, and the policy or policies of such insurance or insurances, and the proceeds thereof to assign, transfer, and set over as aforesaid, it shall and may be lawful to and for the said party of the second part, his executors or administrators, to so insure and keep insured the said goods and chattels, household stuff and kitchen furniture, and the costs, charges, and expenses of such insurance or insurances shall and may be, and be considered part and parcel of the debt hereby secured or intended to be secured, and payable out of the proceeds of any sale or sales made in and by virtue of these presents, and by the said party of the

first part, his executors, administrators, or assigns, before the making or executing of any deed of release as hereinbefore provided.

In testimony whereof the said party of the first part has hereunto subscribed his name and affixed his seal, on the day and year first hereinbefore written.

M. A. DEXTER. [SEAL.]

Signed, sealed, and delivered in presence of—
F. J. MURPHY,
WM. MARTIN.

Schedule "A," referred in the aforegoing Deed of Trust.

1 steam-boiler, furniture, and fixtures; one large cooking range, and all the kitchen furniture; one bar-room marble floor; all the bar fixtures and furniture; one piano; fifty-five Brussels and velvet carpets on floors; sixty-five double and single bedsteads; sixty-five hair mattresses, sixty-five shuck mattresses, eight doz. mahogany hair-seat chairs; one double set of rosewood parlor furniture; three large parlor mirrors; one hundred pairs of fine wool blankets; fifty white spreads; fifty quilt comforts; eighty pair of linen sheets; one hundred pillows and bolsters; one hundred and four curtains to windows; one hundred do. shades; sixty-five bureaus; sixty-five washstands; 12 doz. plate forks; 12 doz. table straws; 12 doz. teaspoons; 20 castors; 10 doz. table knives; 6 doz. desert knives; all the crockery, glass ware, and table furniture, and linen; five sideboards; six dining tables; 8 doz. dining chairs; one parlor carpet; sixty-five basin ewers and chambers; sixty-five chambers, mirrors, and all the office desks and furniture.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this twenty-fifth day of October, 1856, personally appeared before me, the subscriber, a justice of the peace in and for the county and district aforesaid, Melvin A. Dexter, party grantor to the foregoing instrument of writing, and acknowledged the same to be his act and deed for the purposes therein set forth.

F. J. MURPHEY, *J. P.* [SEAL.]

Lease, dated 18th August, 1855, from Ann R. Dermott to Melvin A. Dexter, referred to in Defendant's Bill of Exceptions.

A. R. DERMOTT to M. A. DEXTER. } Lease.

These articles of demise and covenant made and concluded this 18th day of August, 1855, between Anne R. Dermott, of the city of Washington, D. C., of the one part, and Melvin A. Dexter, of the same city, of the other part, witness, that the said Anne R.

Dermott hath granted, leased, and demised, and by these presents doth grant, lease, and demise, unto the said Melvin A. Dexter, for and in consideration of the rents, covenants, and agreements hereinafter reserved, covenanted and agreed to be paid, kept, and performed, on the part and behalf of him, the said Melvin A. Dexter, all those certain messuages, tenements, and premises, heretofore leased and demised by her, the said Anne R. Dermott, to one Maria B. French; and also all those certain messuages, tenements, and premises, heretofore leased and demised by her to one John C. Brashear, both being for certain terms of years, heretofore ended and determined, including in the two demises aforesaid the entire range of buildings, messuages, and tenements, erected on lots one and twelve in square 432, and fronting on Market space and 7th street west, in the said city, saving and excepting so much and such parts and parcels of said buildings, messuages, and tenements, with the appurtenances, as are now held and enjoyed by R. W. Carter, Peter H. Hooe and partners, Emanuel D. Etchison, and Charles A. Ligget, assignee, Elijah M. Bartholow, who was assignee of one Cornelius G. Wildman, severally and respectively, as tenants of said Anne A. Dermott, under several demises by her heretofore made; to have and to hold all the herein and hereby granted and demised premises unto the said Melvin A. Dexter, from and after the date of these presents until the first day of October next, and from and after that day for and during the term of three years, fully to be completed and ended; and if the said Melvin A. Dexter shall, within the space of one year from and after the said first day of October, give notice in writing to the said Anne R. Dermott that he desires to extend the said term to the term of five years instead of three years, from and after the said first day of October, then and in that case, but not otherwise, to have and to hold the said demised premises to the said Melvin A. Dexter, for and during the term of five years from and after the said first day of October, fully to be completed and ended: he, the said Melvin A. Dexter, yielding and paying therefor rent and rents at the rate of three thousand dollars per annum, in the instalments, at the time and times, and in the manner following—that is to say, two hundred and fifty dollars on the first day of November next, and the like sum of money on the first day of each and every month thereafter during the said term; and if the said Melvin A. Dexter should elect to extend the term to five years instead of three years by giving notice as aforesaid, then, on the first day of each and every successive month during the said extended term; and the said parties do, by these presents, covenant and agree, the one with the other, as follows—that is to say, that the said Melvin A. Dexter shall not, and will not, at any time or times during the said term or extended term, assign or underlet the said premises, or any part or parcel thereof, for any term or time whatsoever, to any per-

son or *or* persons whatsoever, without the express consent in writing of the said Anne R. Dermott, (except so far as is necessary to conduct his hotel;) and that he shall not, and will not, at any time or times during the said term or extended term, remove or attempt to remove any of his goods, chattels, wares, or merchandises, from the said premises, without the consent in writing of the said Anne R. Dermott, except the same be replaced of equal value; and it is, by these presents, stipulated and agreed between the said parties, and these presents are made and constituted upon the express condition, that if the said Melvin A. Dexter shall, at any time or times hereafter, during the said term or extended term, so assign or underlet the said demised premises, or any part or parcel thereof, without such consent as aforesaid; or if he shall, at any such time or times, without such consent, remove or attempt to remove any of his goods, chattels, &c., as aforesaid, then, and in either case or event, the said term and extended term shall, at the sole option and election of the said Anne R. Dermott, utterly cease and determine; and the said Anne R. Dermott shall and may, at her sole option and election, immediately thereupon re-enter upon and repossess herself of the said demised premises, and expel therefrom the said Melvin A. Dexter, and every assignee or under-tenant who may be found in possession; and, moreover, that in either of the said cases, and immediately upon the happening of either of the said events, one whole year's rent, to wit, the rent of three thousand dollars over and above all such rents, (that is to say,) all such of the rents hereinbefore reserved to be paid on the first day of each and every month during the said term or extended term as shall have then already accrued shall be, and by these presents is, reserved to be paid by the said Melvin A. Dexter to the said Anne R. Dermott, and shall immediately thereupon accrue and become due and owing from him, the said Melvin A. Dexter, to her, the said Anne R. Dermott, and shall and may be levied by distress and sale of all such goods and chattels as shall or may be there found on the premises liable to distress for rent; and that the said Melvin A. Dexter shall, at his own cost and charge, and without any charge or cost to the said Anne R. Dermott, put the said premises in good repair, and so keep and preserve them during the said term and extended term, and so deliver the same back to her at the end of such term; that the said Melvin A. Dexter shall and may, at the end of the said term, remove all such fire-grates, and bar-fixtures, also marble floor, as he may think fit to supply on the premises for the more convenient exercise of his business, so as the same be so contrived as to be removable without damage or defacement to the premises, and so as the premises be completely restored to good order and repair in such parts *or* any such improvements may be removed from; and it is further covenanted and agreed upon by and between Anne R. Dermott and Melvin A. Dexter, that if the

said Melvin A. Dexter should not agree to the terms for the rent of the third-story room, immediately over the dining-room, and which is now under lease to Peter H. Hooe & Co., and which is used by them as a carpet room, at the expiration of their lease, that then and in that case the said Anne R. Dermott shall have a right of entrance and stairway where Messrs. Hooe & Co. have now a well-hole to take their carpeting into said room—that is to say, the right of stairway through one of the doorways in the store-room, fronting east on 7th street west, through the dining-room in second story, to said room in the third story of that portion of the building designated as the warehouse; and it is also further agreed, that wherever any joists are to be cut for stairway or doors, and windows cut, and a proper flue and hearth for the protection of the property in fitting up the new kitchen, the said Anne R. Dermott is to be consulted, and her consent first had in writing.

Witness the hands and seals of the parties the day and year aforesaid.

ANNE R. DERMOTT, [SEAL.]
M. A. DEXTER. [SEAL.]

Sealed and delivered in the presence of—
EGLANTINE COKE.

Deed Trust dated 5th day of November, 1855, from Melvin A. Dexter to Charles S. Wallach, referred to in defendant's bill of exceptions, page 81, &c.

MELVIN A. DEXTER to CHARLES S. WALLACH. } Deed Trust recorded 4th December, 1855, in Liber J. A. S., No. 108, fol. 81, &c.

This indenture, made this fifth day of November, in the year of our Lord one thousand eight hundred and fifty-five, between Melvin A. Dexter, of the county of Washington, in the District of Columbia, of the first part, and Charles S. Wallach, of the same place, of the second part, witnesseth: Whereas the said party of the first part is justly indebted unto Cornelius Wendell, of the city of Washington, in the full sum of five thousand dollars, and for the said sum has passed to the said Cornelius Wendall his certain promissory note, bearing even date with these presents, for the sum of five thousand dollars, and payable to the order of said Cornelius Wendall one year after date, with interest, and being desirous to secure the payment of said promissory note when and as the same shall become due and payable, has agreed to make and execute these presents:

Now, therefore, this indenture further witnesseth, that for and in consideration of the premises, and of the sum of five dollars, current money of the United States, to him in hand paid, at and before the sealing and delivery of these presents, the receipt

whereof is hereby acknowledged, the said party of the first part has bargained, sold and delivered, assigned, transferred and set over, and by these presents does bargain, sell, and deliver, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, all and singular the goods and chattels, household stuff and kitchen furniture named and described in the schedule marked "A" and hereunto annexed, and now lying and being situate in a certain messuage or tenement and premises on the corner of D and 7th streets, in the city of Washington, and occupied by the said party of the first part as a hotel, (called Dexter's Hotel;) to have and hold the said goods and chattels, household stuff, and kitchen furniture, unto him the said party of the second part, his executors, administrators and assigns, to his and their own proper use, benefit and behoof forever; in trust, nevertheless, to, for and upon the following uses and trusts, that is to say: In trust to sufier and permit the said party of the first part, his executors or administrators, to retain possession of, use and enjoy the said goods and chattels, household stuff and kitchen furniture, until default made in the payment of said promissory note, or of any note or notes, or of any part of any note given in and by way of renewal thereof, or until said party of the first part, his executors or administrators, do and shall suffer and permit any one quarter's rent of said messuage or tenement, or any messuage or tenement in or to which the said goods and chattels, household stuff and kitchen furniture, or any part thereof, shall or may be removed, put and placed, to become due and owing, and remain so due and owing for the space of thirty days after the same shall have become so due and owing, or shall suffer and permit any judgment to be recovered in any court of law or of equity, or before any magistrate or justice of the peace, against him the said party of the first part, his executors or administrators, and execution or executions to be issued and levied upon the said goods and chattels, household stuff and kitchen furniture, or any part or parcel thereof; and in case the said party of the first part, his executors or administrators, do and shall fail to pay and satisfy said promissory note, or any note or notes, or any part of any note or notes given in and by way of renewal thereof, or shall suffer and permit any one quarters's rent of said messuage or tenement, or any other messuage or tenement, in and to which the said goods and chattels, household stuff and kitchen furniture, or any part thereof, shall or may be removed, put and placed as aforesaid, to become due and owing, and remain due and owing for the space of thirty days as aforesaid, or any judgment as aforesaid to be recovered as aforesaid, and execution to be issued and levied as aforesaid, then, and in either of these cases, the said party of the second part, his executors or administrators, do and shall, at the request of the said Cornelius Wendell,

or his executors, administrators or assigns, take possession of said goods and chattels, household stuff and kitchen furniture; and, after giving at least ten days' notice in some paper printed and published in the city of Washington, sell the same at public sale, upon such terms as he shall deem most advantageous to the parties concerned, and deliver the same to the purchaser or purchasers thereof, and out of the proceeds of said sale, after retaining unto himself five per cent. upon the gross amount of said sale for his trouble in executing this trust, pay in the first place all expenses of said sale, and in the next place pay to the said Cornelius Wendell, his executors, administrators or assigns, the whole amount of said promissory note, or of any note or notes given in and by way of renewal thereof, or so much thereof as may then remain unpaid, it being understood and agreed that on the happening of either of the aforesaid events, the whole of said promissory note, or any note or notes given in and by way of renewal thereof, shall and are to be, and be considered due and payable, and all credit thereon to cease, together with all interest which may have accrued thereon, and the balance, if any, pay over to the said party of the first part, his executors, administrators or assigns. But in case the said party of the first part, his executors or administrators, do and shall, well and truly, without default, and without having suffered and permitted any rent to have become due and owing, and remained due and owing as aforesaid, or any judgment to be recovered and execution to be issued and levied as aforesaid, pay and satisfy said promissory note, and all and every promissory note or notes given in and by way of renewal thereof, together with all interest which may accrue thereon when and as the same shall become due and payable, then, and in that case, the said party of the second part, his executors or administrators, do and shall, at the request and cost of the said party of the first part, his executors, administrators or assigns, make and execute unto him the said party of the first part, his executors, administrators and assigns, good and sufficient deed of release of all and singular the said goods and chattels, household stuff and kitchen furniture; and the said party of the first part, for himself, his heirs, executors and administrators, by these presents covenants, promises and agrees to and with the said party of the second part, his heirs, executors, administrators and assigns, the said goods and chattels, household stuff and kitchen furniture hereby bargained, sold and conveyed, to insure and keep insured, in the full sum of five thousand dollars, in some good and safe insurance office in the city of Washington, during the continuance of this trust, and the policy and policies of such insurance or insurances, and the proceeds thereof from time to time during the continuance of this trust, to assign, transfer and set over unto him the said party of the second part, his executors and administrators, to, for and upon

the uses and trusts, intents and purposes in this indenture mentioned; and in case of a failure on the part of the said party of the first part, his executors or administrators, to so insure and keep insured the said goods and chattels, household stuff and kitchen furniture, and the policy or policies of such insurance or insurances, and the proceeds thereof to assign, transfer and set over as aforesaid, it shall and may be lawful to and for the said party of the second part, his executors or administrators, to so insure and keep insured the said goods and chattels, household stuff and kitchen furniture, and the costs, charges, and expenses of such insurance or insurances shall and may be and be considered part and parcel of the debt hereby secured, or intended to be secured, and payable out of the proceeds of any sale or sales made in and by virtue of these presents and by the said party of the first part, his executors, administrators or assigns, before the making or executing of any deed of release, as hereinbefore provided.

In testimony whereof the said party of the first part has hereunto subscribed his name and affixed his seal, on the day and year first hereinbefore written.

M. A. DEXTER. [SEAL.]

Signed, sealed, and delivered in presence of—
T. C. DONN,
JNO. S. FINCH.

Schedule "A," referred to in the foregoing Deed of Trust.

23 mahogany and walnut French bedsteads; 25 maple bedsteads; 45 mahogany and walnut bureaus; 45 mahogany and walnut washstands; 5 dozen mahogany chairs; 4 large easy chairs; 1½ dozen large easy French rocking chairs; 2 bedstead sofas; 8 dozen oak dining chairs; 48 hair mattresses; 24 small tables; 6 mahogany sofas; 11 walnut dining tables; 4 rosewood sofas; 2 large oval rosewood chairs; 1 dozen rosewood parlor chairs; 45 bed-spreads; 100 pairs linen sheets; 50 pairs blankets; 16 silver-plated entry dishes; all the china, glass and earthenware; all the cutlery, knives, forks and spoons; all the kitchen furniture; all the marble tiling on floors, and the steam-boiler pipes and other steam fixtures, &c., and 100 feather pillows and cases, and 100 bolsters.

M. A. DEXTER.

DISTRICT OF COLUMBIA,
Washington County, to wit.

On this sixth day of November, 1855, personally appeared before me, the subscriber, a justice of the peace in and for the county and district aforesaid, Melvin A. Dexter, party grantor to the foregoing instrument of writing and deed of trust, and acknowledged the same to be his act and deed for the purposes therein set forth.

T. C. DONN, *J. P.* [SEAL.]

Letter from Thos. J. Fisher to Anne R. Dermott, of 22 June, 1857, in relation to the keys of the house, referred to in Defendant's Bill of Exceptions.

WASH., D. C., *June* 23, '57.

MRS. ANNE R. DERMOTT.

DR. MADAM: A person, by direction of Mr. Dexter, left the keys of your house with me a few days since, which you can have by calling for them.

Very respectfully,

THO. J. FISHER,
At Jas. C. McGuire's.

Test: JNO. A. SMITH, *Cl'k.*

Writ of Error produced.

And whereas afterwards, to wit, on the fourteenth day of November, in the year eighteen hundred and fifty-nine, the said defendant, by her attorneys aforesaid, produced and filed in court here, the United States writ for the correction of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia; and in pursuance thereof, and according to the form and effects of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid and all things thereunto relating, with the writ of error aforesaid and a copy of the appeal bond, hereunto annexed, is transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 3d day of December, 1859.

[L. S.]

JNO. A. SMITH, *Cl'k.*

Filed 2d March, 1860.